IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16721 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LILIBEN W/O NAGINBHAI DAYALBHAI KOLI - PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 16721 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 28/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 22/11/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that five F.I.Rs. were registered against him before Southern Division Police Station between 29/03/03 & 20/10/03 for offences punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid five registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities, which amounted to a threat to public order, and accordingly, the impugned order of detention was passed against the petitioner.

4. The petitioner has challenged the said order of his detention on various grounds. One of the grounds is that the representation of the petitioner was not promptly decided by the concerned authority, and therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has argued that the detenu had submitted a representation to the detaining authority on 28/11/03. She produces postal acknowledgment along with other letters which are taken on record. It can be gathered from the communication received from the State Government dated 12/12/03 that the said representation was received by the Government on 08/12/03. It has been contended that the representation was received by the detaining authority on 27/11/03 and that it was despatched on 01/12/03. However, it is not explained as to how the representation was received by the State Government on 08/12/03. No affidavit has been filed in this behalf.

7. This shows that there was a delay in considering and disposing of the representation of the petitioner. It is well settled that a right to submit an effective representation under Article 22(5) of the Constitution of India would also cover a right to get decision on the said representation within reasonable time. In the present case, we find that the petitioner was denied the said right as his representation was not dealt with and decided within a reasonable time. Delay in disposal of the representation would amount to denial of the right to representation under Article 22(5) of the Constitution of India. In that view of the matter, when a constitutional remedy has been denied, then further continuance of the detention of the petitioner cannot be upheld. Therefore, the order of detention is required to be quashed and set aside.

8. For the foregoing reason, this petition is allowed. The impugned order of detention dated 22/11/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Lilaben W/o. Naginbhai Dayalbhai Koli - Patel, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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